

VZCZCXRO1454
OO RUEHCHI RUEHCN RUEHDT RUEHHM
DE RUEHJA #1737/01 2560832
ZNY CCCCC ZZH
O 120832Z SEP 08
FM AMEMBASSY JAKARTA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 0071
INFO RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS PRIORITY
RUEHBY/AMEMBASSY CANBERRA PRIORITY 3022
RUEHLM/AMEMBASSY COLOMBO 1286
RUEHKA/AMEMBASSY DHAKA 1256
RUEHNE/AMEMBASSY NEW DELHI 2221
RUEHPB/AMEMBASSY PORT MORESBY 3978
RUEHUL/AMEMBASSY SEOUL 4896
RUEHKO/AMEMBASSY TOKYO 2483
RUEHWL/AMEMBASSY WELLINGTON 3059
RUEHHK/AMCONSUL HONG KONG 2961
RUEHBAD/AMCONSUL PERTH 1125
RHEFDIA/DIA WASHINGTON DC
RHMCSUU/FBI WASHINGTON DC
RUEAIIA/CIA WASHDC
RUEAWJA/DEPT OF JUSTICE WASHDC
RHHJJPI/USPACOM HONOLULU HI
RHEHNSC/NSC WASHDC
RUEKJCS/SECDEF WASHDC

C O N F I D E N T I A L SECTION 01 OF 02 JAKARTA 001737

SIPDIS

DEPT FOR EAP, EAP/MTS, EAP/MLS, S/CT, INL FOR
BARCLAY/ROESS/BUHLER
DOJ FOR CRIM AAG SWARTZ, DOJ/OPDAT FOR
LEHMANN/ALEXANDRE/BERMAN
DOJ/CTS FOR MULLANEY, ST HILAIRE
FBI FOR ETTUI/SSA ROTH
NCTC WASHDC
NSC FOR E.PHU

E.O. 12958: DECL: 09/12/2018
TAGS: [PGOV](#) [PTER](#) [KJUS](#) [ID](#) [AS](#)
SUBJECT: CONSTITUTIONAL COURT BEGINS BALI BOMBER PROCEEDINGS

REF: A. JAKARTA 1628
[1](#)B. JAKARTA 1582

JAKARTA 00001737 001.2 OF 002

Classified By: Pol/C Joseph L. Novak, reasons 1.4(b+d).

[1](#)1. (C) SUMMARY: Indonesia's Constitutional Court has begun hearing the three Bali bombers, last-ditch appeal. The three (via their lawyers) have claimed that execution by firing squad, the constitutionally mandated method of execution, is "torture." Representatives from the Indonesian government have asked the Court to deny the appeal. The Supreme Court--which has parallel powers--has already turned down all the bombers' appeals. It is not clear how long it will take the Constitutional Court to decide this matter. The GOI has already announced that the three will not be executed during Ramadan. END SUMMARY.

PROCEEDINGS BEGIN

[1](#)2. (SBU) On September 11, the Constitutional Court began a plenary hearing regarding the constitutionality of execution by firing squad. Abdul Mukhtie Fadjar, the newly elected Deputy Chief Justice (ref B), presided over the first session. The case was brought to the Constitutional Court by the Bali bombers, lawyers, who have stated that death by firing squad was torture (ref A). (Note: The three terrorists, Amrozi, one name only, Imam Samudra and Ali Gufron, are on death row, incarcerated on an island prison located off of Central Java. They were given death sentences for their roles in the October 2002 Bali bombing.)

"SHOT TO THE HEART" METHOD -- IS IT TORTURE?

13. (SBU) Before the Constitutional Court, the lawyers claimed that execution by firing squad, the legal form of execution in Indonesia, was "torture" because there was "a (time) gap" between the shot to the heart and death. The lawyers argued that during this gap the executed prisoner felt pain, which made this form of execution unconstitutional. The bombers requested that they be beheaded instead as they believed this form of execution was more in line with Islamic precepts.

14. (U) The Bali bomber's attorneys also claimed that the law regarding executions was enacted undemocratically: as the result of an authoritarian government and adopted via a decree. While the GOI representatives acknowledged the origins of the law, they explained that the decree passed a legislative review and was legally and constitutionally upgraded to a law.

GOI PRESSES BACK

15. (SBU) Andi Mattalatta (Justice and Human Rights Minister), Abdul Bari Azed (Secretary General of the Department of Justice and Human Rights), and Qomaruddin (one name only--Director of Litigation and Legislations of the Department of Justice and Human Rights) represented the government of Indonesia at the hearing. Mattalatta, in statements to the press, said he asked the Constitutional Court to deny the Bali bombers, appeal. He elaborated that the method of execution was the most direct and immediate available and that pain should not be considered torture, but "an inevitable consequence of dying."

JAKARTA 00001737 002.2 OF 002

A TEST FOR CONSTITUTIONAL COURT

16. (SBU) It is not clear how long it will take the Constitutional Court to decide this matter. The GOI has already announced that the three will not be executed during Ramadan.

17. (C) Given the changing composition of the court, there is debate on how the court will decide the case. On August 19, the justices elected Mohammad Mahfud Mahmodin and Abdul Mukhti Fadjar as the new chief and deputy chief justices. Of the eight justices sitting on the panel during the September 11 session, three judges presiding in this case--Akil Mochtar, Maria Farida Indrati, and Achmad Sodiki--are new to the court.

18. (C) The proceedings on the Bali bombers will serve as a barometer of the views of the new justices of the Constitutional Court. Although the new court has already begun hearing cases since the new members were sworn in on August 21, this is the first case to attract serious attention. Fritz Siregar, a Constitutional Court clerk, told poloff that he was no longer able to predict rulings given the change in composition of the Constitutional Court judges and he could not speculate whether the case would be decided quickly.

HUME